

# 9-110.000 ORGANIZED CRIME AND RACKETEERING

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## 9-110.010 Introduction

This chapter focuses on investigations and prosecutions involving RICO, (18 U.S.C. §§ 1961-1968), illegal gambling (18 U.S.C. §§ 1511 and 1955), loansharking (18 U.S.C. §§ 891-896), violent crimes in aid of racketeering (18 U.S.C. § 1959), and gambling ships (18 U.S.C. §§ 1081-1083). The Organized Crime and Racketeering Section of the Criminal Division supervises prosecutions of each of these statutes. For an additional discussion of RICO, see "Racketeer Influenced and Corrupt Organizations (RICO): A Manual for Federal Prosecutors," available on USABook.

## 9-110.100 Racketeer Influenced and Corrupt Organizations (RICO)

On October 15, 1970, the Organized Crime Control Act of 1970 became law. Title IX of the Act is the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. §§ 1961-1968), commonly referred to as the "RICO" statute. The purpose of the RICO statute is "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S.Rep. No. 617, 91st Cong., 1st

Sess. 76 (1969). However, the statute is sufficiently broad to encompass illegal activities relating to any enterprise affecting interstate or foreign commerce.

Section 1961(10) of Title 18 provides that the Attorney General may designate any department or agency to conduct investigations authorized by the RICO statute and such department or agency may use the investigative provisions of the statute or the investigative power of such department or agency otherwise conferred by law. Absent a specific designation by the Attorney General, jurisdiction to conduct investigations for violations of 18 U.S.C. § 1962 lies with the agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in 18 U.S.C. § 1961.

## **9-110.101 Division Approval**

No RICO criminal indictment or information or civil complaint shall be filed, and no civil investigative demand shall be issued, without the prior approval of the Criminal Division. *See* RICO Guidelines at USAM 9-110.200.

## **9-110.200 RICO Guidelines Preface**

The decision to institute a federal criminal prosecution involves balancing society's interest in effective law enforcement against the consequences for the accused. Utilization of the RICO statute, more so than most other federal criminal sanctions, requires particularly careful and reasoned application, because, among other things, RICO incorporates certain state crimes. One purpose of these guidelines is to reemphasize the principle that the primary responsibility for enforcing state laws rests with the state concerned. Despite the broad statutory language of RICO and the legislative intent that the statute ". . . shall be liberally construed to effectuate its remedial purpose," it is the policy of the Criminal Division that RICO be selectively and uniformly used. It is the purpose of these guidelines to make it clear that not every proposed RICO charge that meets the technical requirements of a RICO violation will be approved. Further, the Criminal Division will not approve "imaginative" prosecutions under RICO which are far afield from the congressional purpose of the RICO statute. A RICO count which merely duplicates the elements of proof of traditional Hobbs Act, Travel Act, mail fraud, wire fraud, gambling or controlled substances cases, will not be approved unless it serves some special RICO purpose. Only in exceptional circumstances will approval be granted when RICO is sought merely to serve some evidentiary purpose.

These guidelines provide only internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

## **9-110.210 Authorization of RICO Prosecution -- The Review Process**

The review and approval function for all RICO matters has been centralized within the Organized Crime and Racketeering Section of the Criminal Division. To commence the review process, the *final* draft of the proposed indictment or information and a RICO prosecution memorandum shall be forwarded to the Organized Crime and Racketeering Section. Separate approval is required for superseding indictments or indictments based upon a previously approved information. Attorneys are encouraged to seek guidance from the Organized Crime and Racketeering Section by telephone prior to the time an investigation is undertaken and well before a final indictment and prosecution memorandum are submitted for review. Guidance on preparing the RICO prosecution memorandum is in the Criminal Resource Manual at 2071 et seq.

RICO reviews are handled on a first-in-first-out basis. Accordingly, the submitting attorney must allocate sufficient lead time to permit review, revision, conferences, and the scheduling of the grand jury. *Unless there is a backlog, 15 working days is usually sufficient.* The review process will not be dispensed with because a grand jury, which is about to expire, has been scheduled to meet to return a RICO indictment. Therefore, submitting attorneys are cautioned to budget their time and to await receipt of approval before scheduling the presentation of the indictment to a grand jury.

If modifications in the indictment are required, they must be made by the submitting attorney before the indictment is returned by the grand jury. Once the modifications have been made and the indictment has been returned, a copy of the indictment filed with the clerk of the court shall be forwarded to Organized Crime and Racketeering Section. If, however, it is determined that the RICO count is inappropriate, the submitting attorney will be advised of the Section's disapproval of the proposed indictment. The submitting attorney may wish to redraft the indictment based upon the Section's review and submit a revised indictment and/or prosecution memorandum at a later date.

## **9-110.300 RICO Guidelines Policy**

It is the purpose of these guidelines to centralize the RICO review and policy implementation functions in the section of the Criminal Division having supervisory responsibility for this statute.

## **9-110.310 Considerations Prior to Seeking Indictment**

Except as hereafter provided, a government attorney should seek approval for a RICO charge only if one or more of the following requirements is present:

1. RICO is necessary to ensure that the indictment adequately reflects the nature and extent of the criminal conduct involved in a way that prosecution only on the underlying charges would not;
2. A RICO prosecution would provide the basis for an appropriate sentence under all the circumstances of the case in a way that prosecution only on the underlying charges would not;
3. A RICO charge could combine related offenses which would otherwise have to be prosecuted separately in different jurisdictions;
4. RICO is necessary for a successful prosecution of the government's case against the defendant or a codefendant;
5. Use of RICO would provide a reasonable expectation of forfeiture which is proportionate to the underlying criminal conduct;
6. The case consists of violations of State law, but local law enforcement officials are unlikely or unable to successfully prosecute the case, in which the federal government has a significant interest;
7. The case consists of violations of State law, but involves prosecution of significant or government individuals, which may pose special problems for the local prosecutor.

The last two requirements reflect the principle that the prosecution of state crimes is primarily the responsibility of state authorities. RICO should be used to prosecute what are essentially violations of state law only if there is a compelling reason to do so. *See also* the Criminal Resource Manual at 2070.

## **9-110.320 Approval of Organized Crime and Racketeering Section Necessary**

A RICO prosecution memorandum and draft indictment, felony information, civil complaint, or civil investigative demand shall be forwarded to the Organized Crime and Racketeering Section, Criminal Division, 1001 G Street, N.W., Suite 300, Washington, D.C. 20038, *at least 15 working days prior to the anticipated date of the proposed filing or the seeking of an indictment from the grand jury.*

No criminal or civil prosecution or civil investigative demand shall be commenced or issued under the RICO statute without the prior approval of the Organized Crime and Racketeering Section, Criminal Division. Prior authorization from the Criminal Division to conduct a grand jury investigation based upon possible violations of 18 U.S.C. § 1962 is not required.

A RICO prosecution memorandum and draft pleading or civil investigative demand shall be forwarded to the Organized Crime and Racketeering Section. It is essential to the careful review which these factually and legally complex cases require that the attorney handling the case in the field not wait to submit the case until the grand jury or the statute of limitations is about to expire. Authorizations based on oral presentations will not be given. See the Criminal Resource Manual at 2071 *et seq.* for specific guidance.

These guidelines do not limit the authority of the Federal Bureau of Investigation to conduct investigations of suspected violations of RICO. The authority to conduct such investigations is governed by the FBI Guidelines on the Investigation of General Crimes. However, the factors identified here are the criteria by which the Department of Justice will determine whether to approve the proposed RICO. The fact that an investigation was authorized, or that substantial resources were committed to it, will not influence the Department in determining whether an indictment under the RICO statute is appropriate.

Use of RICO in a prosecution, like every other federal criminal statute, is also governed by the Principles of Federal Prosecution. *See* USAM 9-27.000, *et seq.* Inclusion of a RICO count in an indictment solely or even primarily to create a bargaining tool for later plea negotiations on lesser counts is not appropriate and would violate the Principles of Federal Prosecution.

## **9-110.330 Charging RICO Counts**

A RICO charge where the predicate acts consist only of state offenses will not be approved except in the following circumstances:

- A. Local law enforcement officials are unlikely to investigate and prosecute otherwise meritorious cases in which the Federal government has significant interest;
- B. Significant organized crime involvement exists; or
- C. The prosecution of significant political or governmental individuals may pose special problems for local prosecutors.

## **9-110.400 RICO Prosecution (Pros) Memorandum Format**

A well written, carefully organized prosecution memorandum is the greatest guarantee that a RICO prosecution will be authorized quickly and efficiently. *See* the Criminal Resource Manual at 2071 *et seq.* for specific guidelines on drafting the RICO prosecution memorandum.

Once a RICO indictment has been approved by the Organized Crime and Racketeering Section and has been returned by the grand jury, a copy of a file-stamped copy of the indictment shall be provided to the Section. The Section shall also be notified in writing of any significant rulings which affect the RICO statute--for example, any ruling which results in a dismissal of a RICO count, or any ruling affecting or severing any aspect of the

forfeiture provisions under RICO. In addition, copies of RICO motions, jury instructions and briefs filed by the United States Attorney's Office (USAO), as well as the defense, should be forwarded to the Organized Crime and Racketeering Section for retention in a central reference file. The government's briefs and motions will provide assistance to other USAOs handling similar RICO matters.

Once a verdict has been obtained, the USAO shall forward the following information to the Section for retention: (a) the verdict on each count of the indictment; (b) a copy of the judgment of forfeiture; (c) estimated value of the forfeiture; and (d) judgment and sentence(s) received by each RICO defendant.

### **9-110.600 Syndicated Gambling**

*See* the Criminal Resource Manual at 2085.

### **9-110.700 Loansharking**

Useful information on the prosecution of loansharking is available in the Criminal Resource Manual at 2086 through 2088.

### **9-110.800 Violent Crimes in Aid of Racketeering Activity (18 U.S.C. § 1959)**

Section 1959 makes it a crime to commit any of a list of violent crimes in return for pecuniary compensation from an enterprise engaged in racketeering activity, or for the purpose of joining, remaining with, or advancing in such an enterprise. The listed violent crimes are murder, kidnapping, maiming, assault with a dangerous weapon, assault resulting in serious bodily injury, and threatening to commit a "crime of violence," as defined in 18 U.S.C. § 16. The listed crimes may be violations of State or Federal law. In addition, attempts and conspiracies to commit the listed crimes are covered. The maximum penalty varies with the particular violent crime involved, ranging from a fine and/or three years imprisonment up to a fine and/or life imprisonment, except for any murder occurring on or after September 13, 1994, which are subject to the death penalty.

For any murder occurring on or after September 13, 1994, the prosecutor must comply with the Department's death penalty protocol (*see* USAM 9-10.000).

*See* approval guidelines at USAM 9-110.811 through 816.

#### **9-110.801 Violent Crimes in Aid of Racketeering (18 U.S.C. § 1959) -- Division Approval**

No criminal prosecution under Section 1959 shall be initiated by indictment or information without the prior approval of the Organized Crime and Racketeering Section (OCRS). All requests for approval must be submitted at least 15 days in advance and accompanied by a prosecution memorandum and final proposed indictment.

*See* approval guidelines at USAM 9-110.811 through 816.

#### **9-110.802 Violent Crimes in Aid of Racketeering (18 U.S.C. § 1959) -- Approval Guidelines**

Because Section 1959 reaches conduct within state and local jurisdictions, there is, absent compelling circumstances, a need to avoid encroaching on state and local law enforcement authority. Moreover, Section 1959 complements the RICO statute, 18 U.S.C. §§ 1961-1968, and incorporates RICO concepts and terms, namely "enterprise" and "racketeering activity," and there is a need to maintain consistent applications and interpretations

of the elements of RICO. All proposed prosecutions under Section 1959 therefore must be submitted to the Organized Crime and Racketeering Section Criminal Division, for approval in accordance with the following guidelines.

### **9-110.811 The Review Process for Authorization under Section 1959**

The review process for authorization of prosecutions under Section 1959 is similar to that for RICO prosecutions under 18 U.S.C. §§ 1961 to 1968. *See* USAM 9-110.200, *et seq.* To commence the formal review process, submit a final draft of the proposed indictment and a prosecution memorandum to the Organized Crime and Racketeering Section. Before the formal review process begins, prosecuting attorneys are encouraged to consult by telephone the Organized Crime and Racketeering Section in order to obtain preliminary guidance and suggestions.

The review process can be time-consuming because of the likelihood that modifications will be made to the indictment and because of the heavy workload of the reviewing attorneys. Therefore, unless extraordinary circumstances justify a shorter time frame, *a period of 15 working days must be allowed for the review process.*

### **9-110.812 Specific Guidelines for Section 1959 Prosecutions**

A. In deciding whether to approve a prosecution under Section 1959, the Organized Crime and Racketeering Section will analyze the prosecution memorandum and proposed indictment to determine whether there is a legitimate reason the offense cannot or should not be prosecuted by state or local authorities. For example, federal prosecution may be appropriate where local authorities do not have the resources to prosecute, where local authorities are reasonably believed to be corrupt, where local authorities have requested federal participation, or where the offense is closely related to a federal investigation or prosecution. A prosecution will not be authorized over the objection of local authorities in the absence of a compelling reason. Accordingly, every prosecution memorandum must state the views of local authorities with respect to the proposed prosecution, or the reasons for not soliciting them. In addition, the specific factors set forth in the following sections will be considered with respect to all proposed prosecutions.

B. Section 1959 was enacted to combat "contract murders and other violent crimes by organized crime figures." *See* S.Rep. No. 225, 98th Cong., 1st Sess. 304-307, 306 (1983), reprinted in 1984 U.S. Code & Admin. News (U.S.C.A.N.) 3182, 3483-3487. The statutory language is extremely broad, in that it covers such conduct as a threat to commit an assault, and other relatively minor conduct normally prosecuted by local authorities. Thus, although the involvement of traditional organized crime will not be a requirement for approval of proposed prosecutions, a prosecution will not be authorized unless the violent crimes involved are substantial because of the seriousness of injuries, the number of incidents, or other aggravating factors.

C. The statutory definition of "enterprise" also is very broad; it is closely related to the definition of the same term in the RICO statute, 18 U.S.C. § 1961(4). (It should be noted that the definition in section 1959, unlike the RICO definition, includes a requirement of an effect on interstate commerce as part of the definition, and does not include an "individual" within the definition.) No prosecution under section 1959 will be approved unless the enterprise has an identifiable structure and purpose apart from the racketeering activity and crimes of violence it is engaged in, and otherwise meets the standards for a RICO prosecution.

D. The term "racketeering activity" is borrowed directly from the RICO statute, 18 U.S.C. Sec. 1961(1). It will be construed in the same way under Section 1959 as it is under RICO, for purposes of approval. *See* USAM 9-110.100, *et seq.*

### **9-110.815 Prosecution Memorandum -- Section 1959**

Every request for approval of a proposed prosecution under section 1959 must be accompanied by a final draft of a proposed indictment and by a thorough prosecution memorandum. The prosecution memorandum should generally conform to the standards outlined for RICO prosecutions. *See* USAM 9-110.400. The memorandum must contain a concise summary of the facts and a statement of the evidentiary basis for each count, a statement of the applicable law, a discussion of anticipated defenses and unusual legal issues (federal, and where applicable, state), and a statement of justification for using section 1959. It is especially important that the memorandum include a discussion of the nexus between the enterprise and the crime of violence, the defendant's relationship to the enterprise, and the evidentiary basis for each section 1959 count. Submission of a thorough memorandum is particularly important, because of the complexity of the issues involved and because of the statute's similarity to RICO.

### **9-110.816 Post-Indictment Duties -- Section 1959**

Once the indictment or information has been approved and filed, it is the duty of the prosecuting attorney to submit to the Organized Crime and Racketeering Section a copy bearing the seal of the clerk of the court. In addition, the attorney should keep the Organized Crime and Racketeering Section informed of any unusual legal problems that arise in the course of the case, so those problems can be considered in providing guidance to other prosecutors.

### **9-110.900 The Gambling Ship Act -- 18 U.S.C. §§ 1081 et seq.**

*See* the Criminal Resource Manual at 2089.